

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
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08/976,820 11/25/97 LEIBER J BEIERSDORF-4

IM22/0209

SPRUNG KRAMER SCHAEFER AND BRISCOE
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TARRYTOWN NY 10591-5144

EXAMINER

GUARRIELLO, J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1771 *16*

DATE MAILED:

02/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.**Commissioner of Patents and Trademarks**

Office Action Summary

| | |
|-----------------------------|------------------------|
| Application No. | Applicant(s) |
| 08/976820 | Leiber et al. |
| Examiner J. B. Guarcello | Group Art Unit 1771 |

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- Responsive to communication(s) filed on 11/28/2000
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- Claim(s) 28 - 33 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 28 - 33 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) _____.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

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DETAILED ACTION

15. The examiner acknowledges papers # 14 and 15 the extension of time and the amendment of 11/28/2000.
16. The examiner acknowledges the drawings submitted with the response of 11/28/2000, see enclosed PTO-948.
17. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

18. Claims 20-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luhmann et al. 5,725,923 in view of Cole 5,622,761.
Rejection is maintained. New claims 32 and 33 are rejected since they depend on claim 20 and are similar to claims 20-31. Applicant's arguments regarding grip tabs and the number of sides have been considered but they are not persuasive because Luhmann teaches grip tabs, and it is known to have

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tabs with ends uncoated. Even though tabs may not be necessary, as applicant argues, this does not exclude tabs to be used to one of ordinary skill in the art. Applicant's arguments regarding improper hindsight have been considered, but it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned **only** from the applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F2d. 1392; 170 USPQ 209 (CCPA 1971). Furthermore, Cole does describe polygons and circles. Moreover, it is not necessary that the references actually suggest, expressly or in so many words, the changes or improvements that applicant has made. The test for combining references is what the references **as a whole** would have suggested to one of ordinary skill in the art. In re Sheckler, 168 USPQ 716(CCPA 1971); In re Young 159 USPQ 725 (CCPA 1968).

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19. Rejections not maintained are withdrawn because applicant has responded appropriately to those rejections note in paragraphs 19-21 of the action of 8/15/2000.

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris , can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


John J. Guarriello:gj
Patent Examiner

February 2, 2001


ELIZABETH M. COLE
PRIMARY EXAMINER